DEC 22 2016

LOZEAU DRURY LLP

T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
doug@lozeaudrury.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

December 16, 2016

Andy McLeod, QA Manager
Michelle Magni, Human Resources Manager
Commercial Metal Forming
341 W. Collins Ave.
Orange, CA 92867

Bob Messaros, President and CEO
Commercial Metal Forming
P.O. Box 599
Youngstown, OH 44501

VIA FIRST CLASS MAIL

Steel Forming, Inc.
Registered Agent for Service of Process in Ohio for Commercial Metal Forming
(Entity Number 1326469)
1775 Logan Ave.
Youngstown, OH 44505

Re: Notice of Violations and Intent to File Suit under the Federal Water Pollution Control Act

Dear Mr. McLeod, Ms. Magni, and Mr. Messaros:

I am writing on behalf of Orange County Coastkeeper ("OCC") in regard to violations of the Clean Water Act (the "Act") that OCC believes are occurring at Commercial Metal Forming's industrial facility located at 341 W. Collins Avenue in Orange, California ("Facility"). This letter is being sent to Commercial Metal Forming, Andy McLeod, Michelle Magni, and Bob Messaros as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "CMF").

This letter addresses CMF's unlawful discharge of pollutants from the Facility into

channels that discharge into Bitter Bush Channel, which flows into Reach 2 of the Santa Ana River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, OCC refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, OCC hereby places CMF on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, OCC intends to file suit in federal court against CMF under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

A. Orange County Coastkeeper

OCC is a non-profit 501(c)(3) public benefit corporation organized under the laws of California with its main office at 3151 Airway Ave., Suite F-110, Costa Mesa, California 92626. Founded in 1999, OCC has approximately two thousand members who live and/or recreate in and around the Orange County area. OCC is dedicated to protecting and promoting water resources that are swimmable, drinkable, fishable, and sustainable. To further this mission, OCC actively seeks federal and state implementation of the Clean Water Act. Where necessary, OCC directly initiates enforcement actions on behalf of itself and its members.

Members of OCC reside in Orange County, and near the Bitter Bush Channel, the Santa Ana River, and Pacific Ocean (hereinafter "Receiving Waters"). As explained in detail below, the Facility continuously discharges pollutants into the Receiving Waters, in violation of the Clean Water Act and the General Permit. OCC members use the Receiving Waters to swim, wade, surf, standup paddle, boat, kayak, bird watch, view wildlife, hike, bike, walk, and run. Additionally, OCC members use the waters to engage in scientific study through pollution and habitat monitoring and restoration activities. The unlawful discharge of pollutants from the Facility into the Receiving Waters impairs OCC's members' use and enjoyment of these waters.

Thus, the interests of OCC's members have been, are being, and will continue to be adversely affected by the Facility's failure to comply with the Clean Water Act and the General Permit.

B. Commercial Metal Forming's Orange Facility

Commercial Metal Forming is a manufacturer of tank heads and tank accessories. These products have applications for a large variety of markets, including air receivers, petrochemical, LP Gas, oil field, construction equipment, rail and truck transportation, oil and gas separation, food processing, filtration, and the truck market. On information and belief, OCC alleges that the industrial processes that occur at CMF's Facility in Orange include metal cutting, metal pressing, welding, beveling, trimming, joggling, piercing, heat treating, pickling, stainless polishing, and sandblasting. The Facility's Storm Water Pollution Prevention Plan ("SWPPP") indicates that the Facility has shifts ranging from 7 am – 11:30 pm on weekdays. The Facility is sometimes in operation as well on Saturdays from 5 am – 3 pm.

C. Discharges From the Facility

The Waste Discharger Identification Number ("WDID") for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Santa Ana Region ("Regional Board") is 8 301017356. In its Notice of Intent to comply with the General Permit ("NOI"), CMF certifies that the Facility is classified under Standard Industrial Classification ("SIC") codes 3443 and 3469. The NOI indicates that the Facility is covers an area of 7 acres. The Facility collects through a system of storm drains and surface flow and discharges storm water through at least two outfalls. On information and belief, OCC alleges the outfalls contain storm water that is commingled with runoff from the Facility from areas where industrial processes occur. Storm water discharged from the Facility flows into channels that discharge into Bitter Bush Channel, which flows into Reach 2 of the Santa Ana River.

D. Waters Receiving Facility's Discharges

With every significant rainfall event millions of gallons of polluted storm water originating from industrial operations such as the Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

Pollution discharges from industrial manufacturing facilities such as the Facility can contain pH-affecting substances; metals, such as aluminum and iron; toxic metals, such as zinc, lead, cadmium, chromium, copper, arsenic, and mercury; chemical oxygen demand ("COD"); biological oxygen demand ("BOD"); total suspended solids ("TSS"); total organic carbon ("TOC"); benzene; gasoline and diesel fuels; nitrate + nitrite nitrogen ("N+N"); trash; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the

State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm. Discharges of polluted storm water from Facility may pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

The Regional Board has identified beneficial uses of the Santa Ana River and its tributaries and established water quality standards for these waters in the "Water Quality Control Plan for the Santa Ana River Basin (Region 8)," generally referred to as the Basin Plan. *See* http://www.swrcb.ca.gov/rwqcb8/water_issues/programs/basin_plan/index.shtml. The beneficial uses of these waters include groundwater recharge, water contact recreation, non-contact water recreation, wildlife habitat, warm freshwater habitat, and rare, threatened or endangered species. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." *Id.* at 3-3. Contact recreation use includes fishing and wading. *Id.*

The Basin Plan includes a narrative toxicity standard which states that "[t]oxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to levels which are harmful to human health." *Id.* at 4-20. The Basin Plan includes a narrative oil and grease standard which states that "[w]aste discharges shall not result in deposition of oil, grease, wax, or other material in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-14. The Basin Plan includes a narrative suspended and settleable solids standard which states that "[i]nland surface waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses..." *Id.* at 4-16. The Basin Plan provides that "[t]he pH of inland surface waters shall not be raised above 8.5 or depressed below 6.5..." *Id.* at 4-18. The Basin Plan contains a narrative floatables standard which states that '[w]aste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-10. The Basin Plan contains a narrative color standard which states that "[w]aste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affect beneficial uses." *Id.* at 4-10.

The EPA has adopted a freshwater numeric water quality standard for zinc of 0.120 mg/L (Criteria Maximum Concentration – "CMC"). 65 Fed. Reg. 31712 (May 18, 2000) (California Toxics Rule or "CTR").[1]

The EPA 303(d) List of Water Quality Limited Segments lists Reach 2 of the Santa Ana River as impaired for indicator bacteria. *See* http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2012.shtml.

[1] This value is expressed as a function of total hardness (mg/L) in the water body and correspond to a total hardness of 100 mg/L, which is the default listing in the California Toxics Rule.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT").[2] The following benchmarks have been established for pollutants discharged by CMF: pH – 6.0 - 9.0 standard units ("s.u."); total suspended solids ("TSS") – 100 mg/L; oil and grease ("O&G") – 15 mg/L; aluminum – 0.75 mg/L; nitrate + nitrite as nitrogen ("N+N) – 0.68 mg/L; zinc – 0.26 mg/L; and iron – 1.0 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels ("NALs"). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: pH – 6.0 - 9.0 s.u.; TSS – 100 mg/L; O&G – 15 mg/L; aluminum – 0.75 mg/L; N+N – 0.68 mg/L; zinc – 0.26 mg/L; and iron – 1.0 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and O&G – 25 mg/L.

II. Alleged Violations of the General Permit.

A. Discharges in Violation of the Permit

CMF has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

---

[2] The Benchmark Values can be found at http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

CMF has discharged and continues to discharge storm water with unacceptable levels of pH, TSS, aluminum, zinc, and iron in violation of the General Permit. CMF's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained measurements of pollutants in excess of the applicable numerical water quality standard for zinc as well as applicable narrative water quality standards established in the Basin Plan. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Sampling / Observation Date	**Parameter**	**Observed Concentration / Conditions**	**Basin Plan Water Quality Objective / CTR**	**Outfall (as identified by the Facility)**
2/18/2016	pH	2.36	6.5 – 8.5	#1-Collins Drain
2/18/2016	Zinc	0.38 mg/L	0.12 mg/L (CMC)	#1-Collins Drain
1/5/2016	Zinc	0.35 mg/L	0.12 mg/L (CMC)	#1-Collins Drain
1/5/2016	Zinc	0.48 mg/L	0.12 mg/L (CMC)	#2-NW Culvert
9/15/2015	Zinc	0.2 mg/L	0.12 mg/L (CMC)	#2-Collins Ave. Drain
12/12/2014	Narrative	Silt	Basin Plain at 4-16	NW Culvert
12/2/2014	Narrative	Slick	Basin Plan at 4-14	Parking lot runoff

The information in the above table reflects data gathered from CMF's self-monitoring during the 2014-2015 wet season as well as the 2015-2016 reporting year. OCC alleges that since at least December 16, 2011, and continuing through today, CMF has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- pH – 6.5 – 8.5 s.u.
- Zinc – 0.12 mg/L (CMC)
- Sheen –Waste discharges shall not result in deposition of oil, grease, wax, or other material in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses. Basin Plan at 4-14.
- Suspended materials – Inland surface waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses. Basin Plan at 4-16.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Sampling Date	**Parameter**	**Observed Concentration**	**EPA Benchmark Value /Annual NAL**	**Outfall (as identified by the Facility)**
2/18/2016	pH	2.36	6 – 9	#1-Collins Drain
1/5/2016	Total Suspended Solids	1,050 mg/L	100 mg/L	#2-NW Culvert
9/15/2015	Total Suspended Solids	379 mg/L	100 mg/L	#1-NW Culvert
2015-2016 reporting year	Total Suspended Solids	276.9 mg/L	100 mg/L	All discharge points[3]
12/12/2014	Total Suspended Solids	1,440 mg/L	100 mg/L	#1-NW Culvert
12/12/2011	Total Suspended Solids	575 mg/L	100 mg/L	NW Culvert
2/18/2016	Aluminum	7 mg/L	100 mg/L	#2-NW Culvert
1/5/2016	Aluminum	3 mg/L	0.75 mg/L	#1-Collins Drain
1/5/2016	Aluminum	45 mg/L	0.75 mg/L	#2-NW Culvert
9/15/2015	Aluminum	7.8 mg/L	0.75 mg/L	#1-NW Culvert
9/15/2015	Aluminum	3 mg/L	0.75 mg/L	#2-Collins Ave. Drain
2015-2016 reporting year	Aluminum	11.05 mg/L	0.75 mg/L	All discharge points[4]
12/12/2014	Aluminum	23.5 mg/L	0.75 mg/L	#1-NW Culvert

[3] This value represents the average of all TSS measurements taken at the Facility during the 2015-2016 reporting year and is higher than 100 mg/L, the annual NAL for TSS.
[4] This value represents the average of all aluminum measurements taken at the Facility during the 2015-2016 reporting year and is higher than 0.75 mg/L, the annual NAL for aluminum.

2/18/2016	Nitrate + Nitrite as N	0.732 mg/L	0.68 mg/L	#1-Collins Drain
2/18/2016	Nitrate + Nitrite as N	6.61 mg/L	0.68 mg/L	#2-NW Culvert
1/5/2016	Nitrate + Nitrite as N	4.29 mg/L	0.68 mg/L	#2-NW Culvert
9/15/2015	Nitrate + Nitrite as N	4.4 mg/L	0.68 mg/L	#1-NW Culvert
2015-2016 reporting year	Nitrate + Nitrite as N	2.78 mg/L	0.68 mg/L	All discharge points[5]
12/12/2014	Nitrate + Nitrite as N	2.47 mg/L	0.68 mg/L	#1-NW Culvert
12/2/2014	Nitrate + Nitrite as N	1.3 mg/L	0.68 mg/L	#2-NW Culvert
2/18/2016	Zinc	0.38 mg/L	0.26 mg/L	#1-Collins Drain
1/5/2016	Zinc	0.35 mg/L	0.26 mg/L	#1-Collins Drain
1/5/2016	Zinc	0.48 mg/L	0.26 mg/L	#2-NW Culvert
2015-2016 reporting year	Zinc	0.27 mg/L	0.26 mg/L	All discharge points[6]
2/18/2016	Iron	2.12 mg/L	1.0 mg/L	#1-Collins Drain
2/18/2016	Iron	8.76 mg/L	1.0 mg/L	#2-NW Culvert
1/5/2016	Iron	4.37 mg/L	1.0 mg/L	#1-Collins Drain
1/5/2016	Iron	57.2 mg/L	1.0 mg/L	#2-NW Culvert
9/15/2015	Iron	10.5 mg/L	1.0 mg/L	#1-NW Culvert
9/15/2015	Iron	2.15 mg/L	1.0 mg/L	#2-Collins Ave. Drain
2015-2016 reporting year	Iron	7.88 mg/L	1.0 mg/L	All discharge points[7]
12/12/2014	Iron	43 mg/L	1.0 mg/L	#1-NW Culvert
1/24/2013	Iron	5.87 mg/L	1.0 mg/L	NW Culvert
12/12/2011	Iron	9.56 mg/L	1.0 mg/L	NW Culvert

The information in the above table reflects data gathered from CMF's self-monitoring during the 2011-2012, 2012-2013, and 2014-2015 wet seasons as well as the 2015-2016 reporting year. OCC notes that the Facility exceeded the annual NALs for TSS, aluminum, N+N, zinc, and iron during the 2015-2016 reporting year. OCC alleges that since at least December 16, 2011. CMF has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for pH, TSS, aluminum, N+N, zinc, and iron.

---

[5] This value represents the average of all N+N measurements taken at the Facility during the 2015-2016 reporting year and is higher than 0.68 mg/L, the annual NAL for N+N.
[6] This value represents the average of all zinc measurements taken at the Facility during the 2015-2016 reporting year and is higher than 0.26 mg/L, the annual NAL for zinc.
[7] This value represents the average of all iron measurements taken at the Facility during the 2015-2016 reporting year and is higher than 1.0 mg/L, the annual NAL for iron.

OCC's investigation, including its review of CMF's SWPPP, CMF's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, and EPA benchmark values and NALs, indicates that CMF has not implemented BAT and BCT at the Facility for its discharges of pH, TSS, aluminum, N+N, zinc, iron, and potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. CMF was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, CMF is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. OCC alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since December 16, 2011, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which OCC alleges that CMF has discharged storm water containing impermissible and unauthorized levels of pH, TSS, aluminum, N+N, zinc, and iron in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.[8]

Further, OCC puts CMF on notice that 2015 Permit Effluent Limitation V(A) is a separate, independent requirement with which CMF must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the 2015 Permit's Effluent Limitations, including CMF's obligation to have installed BAT and BCT at the Facility. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.[9] Finally, even if CMF submits an Exceedance

---

[8] The rain dates on the attached table are all the days when 0.1" or more rain was observed from a weather station at the Santa Ana Fire Station located approximately 3.75 miles away from the Facility. The data was downloaded via http://ipm.ucanr.edu/calludt.cgi/WXDESCRIPTION?STN=SANTAANA.C. (Last accessed on December 16, 2011).

[9] The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII

Response Action Plan(s) pursuant to Section XII of the 2015 Permit, the violations of Effluent Limitation V(A) described in this Notice Letter are ongoing.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of pH, TSS, aluminum, N+N, zinc, iron, and polluted storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CMF is subject to penalties for violations of the General Permit and the Act since December 16, 2011.

B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. See 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. See 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that best management practices ("BMPs") are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Section B of the 1997 Permit describes the visual monitoring requirements for storm water discharges. Facilities are required to make monthly visual observations of storm water discharges from all drainage areas (Section B(4)). Section B(7) requires that the visual observations must represent the "quality and quantity of the facility's storm water discharges from the storm event." The requirement to make visual observations of storm water discharges from each drainage area is continued in Section XI(A) of the 2015 Permit.

i. Failure to Collect and Analyze Required Storm Water Samples.

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). A sample must be

collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and "shall explain in the Annual Report why the first storm event was not sampled." *See* 1997 Permit, § B(5)(a). The Facility has repeatedly violated these monitoring requirements.

During the 2013-2014 wet season, CMF did not collect and analyze and storm water discharge samples. On information and belief, OCC alleges that CMF failed to collect and analyze storm water discharges on February 27, 2014, a date on which the Facility observed storm water runoff from the Facility. In addition, based on local precipitation data compared with past sampling events at the Facility, OCC alleges that the CMF failed to collect and analyze storm water discharges on the following dates during the 2013-2014 wet season:

- October 28, 2013 – Monday
- November 13, 2013 – Wednesday
- November 29, 2013 – Friday
- December 19, 2013 – Thursday
- February 27, 2014 – Thursday
- April 25, 2014 – Friday

During the 2012-2013 wet season, CMF only collected and analyzed storm water discharges from one storm event at one outfall. Based on the Facility's own reporting of discharges, OCC alleges that CMF failed to collect and analyze storm water discharges at Collins outfall on December 13, 2012; January, 24, 2013; and May 6, 2013. Further, based on the Facility's own reporting, OCC alleges that CMF failed to collect and analyze storm water discharges at both outfalls on March 8, 2013. In addition based on local precipitation data compared with past sampling events at the Facility, OCC alleges that CMF failed to collect and analyze storm water discharges on November 8, 2012; and February 8, 2013.

The above results in at least 7 violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CMF is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least December 16, 2011.

ii. Failure to Conduct Required Visual Observations of Storm Water Discharges.

Section B of the 1997 Permit describes the visual monitoring requirements for storm water discharges. Facilities are required to make monthly visual observations of storm water discharges from all drainage areas (Section B(4)). Section B(7) requires that the visual observations must represent the "quality and quantity of the facility's storm water discharges from the storm event." The requirement to make monthly visual observations of storm water discharges from each drainage area is continued in Section XI(A) of the 2015 Permit.

On information and belief, OCC alleges that CMF failed to conduct monthly visual observations of storm water discharges during numerous months during the past five years. On information and belief, based on precipitation data compared to the dates in which the Facility did conduct monthly visual observation of storm water discharges, as well as the Facility's own reporting, OCC alleges that CMF failed to conduct monthly visual observations of storm water discharges at its storm water discharge locations during at least the following months:

- 2011 – December
- 2012 – February, April, May, November, December
- 2013 – February, March, May, October, November, December
- 2014 – February, April
- 2015 – February, May, July, November, December

Therefore, OCC alleges that CMF failed to conduct monthly visual observations of storm water discharges at the Facility during those months. The above results in at least 38 violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CMF is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since December 16, 2011.

iii. Failure to Analyze Discharges for Mandatory Parameters.

Under the 1997 Permit, facilities must analyze storm water samples for "[o]ther analytical parameters as listed in Table D" based on a facility's SIC code. 1997 Permit, Section B(5)(c)(iii). Under the 2015 Permit, facilities must analyze storm water samples for "[a]dditional applicable parameters" based on a facility's SIC code. 2015 Permit, Section XI(B)(6)(d). A facility such CMF's Facility, with an SIC code of 3443 or 3469 must analyze its storm water discharges for zinc, among other parameters.

On information and belief, OCC alleges that CMF failed to analyze the Facility's storm water discharges for zinc during the 2014-2015, 2013-2014, 2012-2013, and 2011-2012 wet seasons. This failure to analyze zinc in each sampling event results in at least 6 violations of the General Permit. These violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, CMF is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since December 16, 2011.

C. Failure to Complete Annual Comprehensive Site Compliance Evaluation

The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). Section B(14). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual

Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to OCC indicates that CMF has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facility's ACSCE Reports provide an explanation of the Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. See 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). The failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, CMF has not proposed any BMPs that properly respond to EPA benchmark and water quality standard exceedances, in violation of the General Permit.

OCC puts CMF on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and the CWA. CMF is in ongoing violation of Section XV of the 2015 Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. CMF is subject to civil penalties for all violations of the CWA occurring since at least December 16, 2011.

D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. *See* 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or

implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations. *See* 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. *See* 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. *See* 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. *See* 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. *See* 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. *See* 2015 Permit § X(H)(4), (5). A Facility's BMPs must, at all times, be robust enough to meet the General Permit's and 33 U.S.C. ¶ 1342(p)(3)(A)'s requirement that all discharges associated with industrial activities be subjected to BAT and BCT. 2015 Permit §§ V(A), I(A)(1), I(D)(31), I(D)(32); 1997 Permit, Effluent Limitation B(3), Receiving Water Limitation C(3).

The Facility's SWPPP fails to comply with the requirements of Section X(D) of the 2015 Permit. Specifically, the SWPPP fails to contain the required information about the Facility's Pollution Prevention Team.

The SWPPP fails to comply with the requirements of Section X(E) of the 2015 Permit. Specifically, the SWPPP map fails to include a legend, depict the storm water drainage areas

within the Facility boundary, show any portions of drainage areas impacted by discharges from surrounding areas, include the flow direction of each drainage area, show the location of storm water collection and conveyance systems, show the discharge locations, include locations and descriptions of structural control measures that affect industrial storm water discharges, identify all impervious areas of the Facility, show locations where materials are directly exposed to precipitation, and identify all areas of industrial activity.

The SWPPP fails to comply with the requirements of Section X(F) of the 2015 Permit, failing to include the requisite list of industrial materials at the Facility.

The SWPPP fails to comply with the requirements of Section X(G)(1)(a) of the 2015 Permit, failing to describe all industrial processes at the Facility.

The SWPPP fails to comply with the requirements of Section X(G)(1)(b) of the 2015 Permit, failing to describe all material handling and storage areas at the Facility.

The SWPPP fails to comply with the requirements of Section X(G)(1)(c) of the 2015 Permit, failing to describe all dust and particulate generating activities at the Facility.

The SWPPP fails to comply with the requirements of Section X(G)(2) of the 2015 Permit, failing to provide an adequate assessment of potential pollutant sources. CMF has failed to include a narrative assessment of all areas of industrial activity with potential industrial pollutant sources. CMF has failed to identify where the minimum BMPs in different areas of the Facility will not adequately reduce the pollutants in the Facility's storm water dischargers and to identify advanced BMPs for those areas.

The SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement and maintain the required minimum BMPs for material handling and waste management. The SWPPP fails to implement any advanced BMPs. The SWPPP fails to identify and justify each minimum BMP or applicable BMP not being implemented at the Facility because they do not reflect best industry practice considering BAT/BCT.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded applicable water quality standards, EPA benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, CMF has failed to sufficiently update and revise the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

OCC puts CMF on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and OCC will include additional violations as information and data

become available. CMF is subject to civil penalties for all violations of the CWA occurring since December 16, 2011.

III. Persons Responsible for the Violations.

OCC puts Commercial Metal Forming, Andy McLeod, Michelle Magni, and Bob Messaros on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, OCC puts Commercial Metal Forming, Andy McLeod, Michelle Magni, and Bob Messaros on notice that it intends to include those subsequently identified persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of Orange County Coastkeeper is as follows:

Garry W. Brown, Executive Director
Orange County Coastkeeper
3151 Airway Ave. Suite F-110
Costa Mesa, CA 92626
Tel. (714) 850-1965
garry@coastkeeper.org

V. Counsel.

OCC has retained legal counsel to represent it in this matter. Please direct all communications to:

Douglas J. Chermak
Michael R. Lozeau
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, California 94607
Tel. (510) 836-4200
doug@lozeaudrury.com
michael@lozeaudrury.com

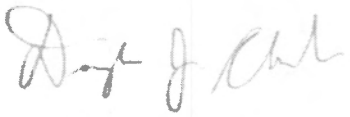
VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects CMF to a penalty of up to $37,500 per day per violation for all violations occurring since October 28, 2011, up to and including November 2, 2015, and up to $51,570 for violations occurring after November 2, 2015. In addition to civil penalties, OCC will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a)

and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

OCC believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. OCC intends to file a citizen suit under Section 505(a) of the Act against CMF and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, OCC would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, OCC suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. OCC does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Douglas J. Chermak
Lozeau Drury LLP
Attorneys for Orange County Coastkeeper

SERVICE LIST – via certified mail

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Loretta Lynch, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Alexis Strauss, Acting Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Kurt V. Berchtold, Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

ATTACHMENT A

Rain Dates, Commercial Metal Forming, Orange, CA

1/15/2012	2/8/2013	5/14/2015
1/21/2012	2/19/2013	5/15/2015
1/23/2012	3/8/2013	7/20/2015
2/15/2012	5/6/2013	9/9/2015
2/27/2012	10/9/2013	9/15/2015
3/17/2012	10/28/2013	10/4/2015
3/18/2012	11/13/2013	11/2/2015
3/25/2012	11/21/2013	11/25/2015
3/26/2012	11/29/2013	11/27/2015
4/11/2012	12/7/2013	12/10/2015
4/13/2012	12/19/2013	12/13/2015
5/1/2012	12/28/2013	12/19/2015
7/13/2012	12/29/2013	12/22/2015
11/8/2012	2/28/2014	12/25/2015
11/17/2012	3/1/2014	12/28/2015
11/29/2012	4/1/2014	12/29/2015
11/30/2012	4/2/2014	1/5/2016
12/1/2012	4/25/2014	1/6/2016
12/2/2012	11/1/2014	1/31/2016
12/3/2012	12/2/2014	2/17/2016
12/13/2012	12/3/2014	3/6/2016
12/18/2012	12/12/2014	3/7/2016
12/24/2012	12/17/2014	3/11/2016
12/26/2012	12/30/2014	10/23/2016
12/29/2012	1/11/2015	11/20/2016
1/6/2013	2/23/2015	11/21/2016
1/24/2013	4/7/2015	11/26/2016
1/25/2013	5/7/2015	11/27/2016
1/26/2013	5/8/2015	12/15/2016